IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CRIMINAL COURT DIVISION

COMMONWEALTH OF PENNSYLVANIA

v.

EMILY BINAKONSKY

Defendant.

ELECTRONICALLY FILED

NO.: CR 711-2021

HON. VALARIE COSTANZO

TYPE OF PLEADING:

FINDINGS OF FACTS AND CONCLUSIONS OF LAW IN REPLY TO COMMONWEALTH'S PROPOSED FINDINGS AND CONCLUSIONS

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INTRODUCTION

A "common sense," "practical," and "nontechnical"[1] review of the warrant and the April 11th hearing leads to one result: complete suppression of the evidence seized. The warrant is wholly defective. That is clear.[2] Instead of admitting this fact, the Commonwealth made a bizarre presentation at the April 11th suppression hearing. Presenting no evidence in defense of the warrant, the Commonwealth didn't just "sit on its hands."[3] Rather, the evidence never entered the building. The Commonwealth did not bring a single person named in the warrant or the affidavit of probable cause. This tactical maneuver was a failed attempt to make a collateral attack on the defendants without exposing the affiant or any other person with knowledge in the warrant to cross-examination. The sole purpose was to deprive the Defendants of their opportunity to exercise their "right to test the veracity of the information contained in the search warrant." *Commonwealth v. Ryan*, 407 A.2d 1345, 1348 (Pa. Super. Ct. 1979). By failing to present a single witness, the Commonwealth failed to meet its burden. On this point alone, the Court should

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[1] *Illinois v. Gates*, 462 U.S. 213 (1983).

[2] The Commonwealth by failing to respond and thus conceding the arguments raised in the opening briefs: (1) the particularity of the items to be searched or seized and (2) the overbreadth of the place to be search resulting in an unlawful, general warrant. These defects alone – even if probable cause was found in the affidavit – are fatal to the warrant. *Groh v. Ramirez*. 540 U.S. 551 (2004) ("In this respect the warrant was so obviously deficient that we must regard the search as 'warrantless' within the meaning of our case law").

[3] *Commonwealth v. Enimpah*, 62 A.3d 1028, 1033 (Pa. Super. Ct. 2013), *aff'd* 106 A.3d 695 (Pa. 2014) (describing the Commonwealth's failure to call a single witness while affiant was present in the courtroom as "simply sit[ting] on its hands").

grant suppression. The Superior Court would affirm the ruling, and the Supreme Court would agree.

While the Court could grant suppression solely on the Commonwealth's failure to meet its burden, the warrant is fatally defective in numerous ways as outlined in the opening brief. Moreover, it is understandable that the Commonwealth failed to present a single witness with first-hand knowledge of anything alleged in the affidavit of probable cause. This was both tactical and factual: there was no witness and the Commonwealth knew it.

Once again, the Commonwealth is striving to bypass the Defendants' constitutional rights to challenge the veracity of the affidavit of probable cause by attempting to introduce evidence 28 days after the hearing ended. Not only is this procedurally improper but also the evidence it attempts to introduce destroys the Commonwealth's defense of the defective warrant. It not only casts doubt on the entire pre-search investigation and the warrant but also it explains the motivation underlying the bizarre presentation at the April 11th hearing. In an attempt to conceal these deficiencies, the Commonwealth denied the Defendants' their right to confrontation.

In a brief filed by the Commonwealth - not through testimony - the Commonwealth finally reveals that there is no James Watson. In other words, the most outlandish, horrific lies were sent by an unknown, unreliable person. Further, no attempt *prior* to the search was made to confirm any of the information contained therein nor if "James Watson" was real. Instead, the Pennsylvania State

Police relied on unnamed sources on Facebook, a fake name, a felonious name, and rumors.

This was clearly a response to the opening brief which inquires about James Watson's reliability, criminal record, or existence.[4] While the Commonwealth answers the questions concerning James Watson, it avoids any discussion about Amelia Breitenbach. Once again, the Commonwealth plays "hide the ball" because it fails to answer identical questions concerning Amelia Breitenbach.[5] This is a tactical attempt to hide the facts before the Court. The Commonwealth does not address this question because there is a person named Amelia Breitenbach who lives in Allegheny Count,[6] and this person named Amelia Breitenbach has a lengthy criminal history with numerous convictions of crimes of dishonesty at felony grades. Moreover, this person had multiple probation violations while serving those sentences and completed probation a mere three years before her hearsay statements. These statements – without investigation by the Pennsylvania State Police – were included in the affidavit of probable cause. Any statement from a

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[4] "There is no information that any member of law enforcement spoke with a person named Watson, ran a criminal background check on a person named Watson, checked property records for someone named Watson, nor any other step to establish his reliability or veracity. In fact, there's no indication in the affidavit that "James Watson" is even a real person."

[5] "There is no information that any member of law enforcement spoke with a person named "Amelia Breitenbach," ran a criminal background check on a person named "Amelia Breitenbach," checked property records for a person named "Amelia Breitenbach," nor any other step to establish this person's reliability or veracity. In fact, there's no indication in the affidavit that "Amelia Breitenbach" is even a real person."

[6] Contemporaneous with the filing of this reply brief, Defendant filed a Motion for Judicial Notice.

person with this name should have required further investigation, and *at a minimum*, required a single conversation between law enforcement and the referenced individual. This information was not hidden on JNET nor CPCMS – it was publicly available on UJS and could be discovered with a simple search. Instead, the Pennsylvania State Police searched Facebook. In the Commonwealth's attempt to cover up its 4th Amendment and Article 1, Section 8 violations, it continued its Constitutional attacks by attempting to evade the confrontation clause.

ANALYSIS

I. The Commonwealth *Intentionally* Failed to Meet Its Burden

By failing to present a single witness, the Commonwealth failed to meet its burden. "When the defendant specifically complains of defects in the warrant or its execution, he thereby alerts the Commonwealth of a particularized burden of proof on those objections. To satisfy that burden the Commonwealth must introduce witnesses subject to the defendant's cross-examination." *Commonwealth v. Iacavazzi*, 443 A.2d 795, 798 (Pa. Super. Ct. 1981). Here, the Commonwealth failed to do so.

At this point, the Court could grant suppression. The Superior Court would affirm the ruling, and so would the Supreme Court. *See Commonwealth v. Enimpah*, 62 A.3d 1028, 1033 (Pa. Super. Ct. 2013), *aff'd* 106 A.3d 695 (Pa. 2014) ("[a]s the Commonwealth essentially refused to contest [defendant's] motion, Judge [ ] was well within [ ] discretion to grant the motion and suppress the evidence").

"The burden is on the Commonwealth to establish the validity of the search warrant and the burden is not carried by merely introducing the search warrant and affidavit with no supporting testimony because then the only way for the defendant to challenge the veracity of the information is to call witnesses himself and this effectively shifts onto him the burden of disproving the veracity of the information, an almost impossible burden." *Commonwealth v. Ryan*, 407 A.2d 1345, 1348 (Pa. Super. Ct. 1979).

Rather than shifting an improper and "almost impossible burden" upon Defendants, the Court should suppress all evidence because the Commonwealth intentionally failed to meet its burden at the April 11th hearing.[7]

II. The Affidavit is Devoid of Probable Cause, and the Commonwealth's Attempt to Violate the Sixth Amendment Actually Hurts Its Case

The affidavit is devoid of probable cause,[8] and the Commonwealth continues its gamesmanship in its attempt to violate the 6th Amendment. Even then, the information provided actually harms their case and proves that the police failed to

[7] As described later in section "IV. The Commonwealth's Attempt to Shroud these Numerous Defects Violates the Confrontation Clause and These Deceptive Tactics Should Not Be Supported by the Court," the Commonwealth's failure was not from neglect rather it was done with intent to deprive the Defendants of their rights.

[8] The Commonwealth failed to respond nor rebut the strong arguments presented in Defendant's opening brief concerning the particularity and overbreadth defects. Thus, the Commonwealth has waived them, and the warrant is fatally defective. In other words, even if the Court were to find sufficient probable cause, it would not change the outcome. Intentionally failing to meet its burden combined with these fatal defects could not be cured by a finding of probable cause nor would it lead to any result other than suppression.

investigate anything or they did and withheld it from the magistrate. Given that this fact – that James Watson is not real - was only revealed to the Defendants, their counsel, and numerous tribunals (including this Court), 1,357 days after the search casts doubt on the police's motivations in obtaining the search warrant.

Unfortunately, these areas could not be explored at the April 11th suppression hearing because the Commonwealth *intentionally* failed to present any cross-examinable witness with pre-search knowledge. Either way, whether by laziness or deception, the affidavit is devoid of probable cause which leads to the same result: complete suppression. In support of its numerous arguments concerning probable cause, the Commonwealth relies on a single case, *Commonwealth v. Murphy*, 916 A.2d 679 (Pa. Super. Ct. 2007).

A. Murphy

On June 20, 2005 at 11:18PM, the named informant (the victim) called the police from her job and told them that she received threats from Mr. Murphy, that he was on his way from New York City, and he was driving at a high rate of speed towards her place of employment. *Id.* at 680–81. Law enforcement arrived and learned that Mr. Murphy was angry about the victim's "interference" with his relationship with his girlfriend. *Id.* While on the scene, the victim indicated to police that Mr. Murphy was trafficking drugs and illegal proceeds through the home he shared with his girlfriend. *Id.* The victim also indicated that defendant was a drug dealer that would secure drugs in New York City and bring them to Pennsylvania multiple times a week. *Id.* The victim informed the officer that she

was a recovering addict and was contemplating buying drugs from Mr. Murphy. *Id.* at 683. Mr. Murphy called the victim once again,[9] and told her to wait there because one of his associates would be there in fifteen minutes. *Id.* at 683-84. Approximately 15 minutes later, Mr. Murphy's associate arrived and told the officer that he was a friend of Mr. Murphy. *Id.* Subsequently, Mr. Murphy arrived, acted erratically and violently pounded on the door of the victim's place of employment. *Id.* He was arrested for harassment and terroristic threats, and his car was searched. *Id.* The search revealed marijuana. *Id.*

From this incident, police secured a search warrant for his home which was executed on June 21, 2005. Mr. Murphy argued that the affidavit was facially invalid because it failed to indicate when his conversation with the victim occurred. The was the sole basis of the appeal. The court rejected the "staleness" argument because the other elements of probable cause from multiple sources of information were so strong. In its view, to eliminate probable cause with a large amount of supporting evidence *solely* because of a missing date for one source would be a hypertechnical analysis.

[9] It is difficult to follow whether this call was made in the presence of the officer or later relayed to him. Given the 15 minute time window, and the subsequent statement concerning Michael Dwyer, it could be interpreted that the call was made in the officer's presence.

B. *Murphy*'s Use by Commonwealth

The Commonwealth cites *Murphy* for almost every aspect of its probable cause discussion. However, this "versatile" case fails to offer the full value to the Court upon analysis.

In Paragraph 13 of its brief, the Commonwealth cites to *Murphy* in support of its argument that "[t]he number of tips recorded within the warrant, including Facebook posts add further reliability." That language fails to appear in that pincite. In fact, there's no support for any of those assertions in *Murphy*, nor do many of those words – including "tips," "Facebook," or "number" – appear *anywhere* in the opinion.[10] Instead, the law completely refutes this argument. *See Commonwealth v. Sharp*, 683 A.2d 1219, 1224 (Pa. Super. Ct. 1996) (rejecting information in an affidavit that "is devoid of any facts regarding the reliability of the unnamed sources of the reputation information, including the basis of the information, or any reason to credit it"); *United States v. Coleman*, 540 F. Supp. 3d 596, 603 (S.D. Miss. 2021) (where an affidavit fails to articulate the informant's basis of knowledge, "the informant's factual basis could have come from rumors on social media or twenty levels of hearsay") *United States v. Karathanos*, 531 F.2d 26, 31 (2d Cir.1976) (mere rumor is "patently insufficient to provide a sufficient basis for probable cause").

[10] The phrase "reasonable and prudent [person]" is the only phrase that appears *anywhere* in *Murphy*, and it merely states the standard – not its connection to a reasonable and prudent person's interpretation of unnamed, unverified Facebook comments in the context of an affidavit of probable cause.

In Paragraphs 7 and 9 of its brief, the Commonwealth cites *Murphy* for the argument that the names "James Watson" and "Amelia Breitenbach" appear in the affidavit of probable cause, and they are therefore "named informants" which can be viewed as additionally reliable or credible. Unlike the citation in Paragraph 13, this language appears in *Murphy*. A named informant can add additional reliability, but it cannot be the sole factor for reliability. In other words, the mere fact that hearsay statements from a named "person" appear in a warrant – without any other information concerning veracity, reliability, timing, or basis of knowledge – fails to establish reliability. It is a piece of the analysis, but it cannot form the sole basis. Reviewing the facts and affidavit of *Murphy* places this statement in its proper context. The court did not rule simply because the informant was named. She was named, but also the informant's reliability was shown by:

1. Identifying where Mr. Murphy was heading and that he was driving from New York City where he trafficked drugs and proceeds through his home.
2. Informing officers that Mr. Murphy was active in drug sales.
3. Informing officers that she was an addict.
4. Informing officers that she had thought about purchasing drugs from Mr. Murphy.
5. Informing officers that Mr. Murphy called her and said one of his associates would be there soon.
6. The officer's observation of this associate who informed police that he was "a friend" of Mr. Murphy.
7. The officer's observation that Mr. Murphy arrived, acted erratically, and violently pounded on the business' doors.
8. Mr. Murphy had drugs in his vehicle.

The informant's reliability was shown primarily by repeated confirmation of her statements made to law enforcement as well as the officer's first-hand knowledge and observations on the scene. The appeal in *Murphy* concerned an

attack on probable cause because the affiant failed to include information regarding the timing of a conversation. The court rejected the staleness issue because there were so many other sources of quality information in the affidavit. Here, the Commonwealth wants the Court to find reliability *solely* based on the fact that two names were included in the affidavit and discount the numerous reliability, veracity, timing, and source of knowledge problems discussed at length in Defendant's opening brief. To follow the Commonwealth's argument would be to adopt the technical standard it loathes.

C. Comparing the facts sub judice to *Murphy*

Comparing the case at bar to *Murphy* shows that probable cause fails to exist in the present affidavit. Here, unlike *Murphy*, officers never interviewed the "named informants" nor observed behavior supporting reliability (they say something and it happens). Instead, the affiant and the magistrate accepted rumors from H.O. Cunningham, two unidentified Facebook posts, and two letters bearing names. Further, the only corroboration of *any* of this information was that Raymond Seddon had the same publicly listed address that was referenced in the letters. In comparison, the police in *Murphy* talked with the informant, met with the named informant (proving she was a real person), and the information she provided was confirmed by the arrival of Mr. Murphy's associate, Mr. Murphy's arrival at her place of employment, and the presence of drugs in Mr. Murphy's vehicle after he was arrested for acting in an aggressive way as she had previously described.

No legitimate investigation occurred here, and that was how the Pennsylvania State Police relied upon uncorroborated statements of a fake person. With even a rudimentary investigation, perhaps a few clicks on a keyboard, this fact would easily have been confirmed with minimal effort. Instead of investigating, the police searched Facebook.

III. The Value of the Two Letters

As outlined in Defendant's opening brief, the two letters suffer from numerous flaws. The Commonwealth, in its opposition, introduces the argument that the two letters contain "names" and thus provide a sufficient basis for reliability. Upon analysis and application to the facts at bar, this argument quickly erodes.

The fact that an informant may be "named" is not dispositive of reliability. Rather, it adds "additional reliability to the information given to the issuing authority." *Murphy*, 916 A.2d 679, 684 (Pa. Super. Ct. 2007). In other words, the mere fact that an informant is named does not manifest reliability. If that were the case, a letter that simply signs "John Doe" – or in this case "James Watson" – would grant law enforcement carte blanche authority to violate Article 1 Section 8 and the Fourth Amendment. Here, PSP failed to discover – or ignored – that "James Watson" was not a real person.

A. James Watson Does Not Exist

In its brief, the Commonwealth reveals that "James Watson" is not a real person. This is the first time this critical information has ever been revealed. For

1,357 days, the Commonwealth has projected to the Defendants, their counsel, the public, and numerous tribunals, that "James Watson" is a real person.

Even with this revelation, the Commonwealth uses vague language to cover its tracks. It does not describe which of the past 1,357 days that this information was discovered. Instead, it states that "sometime after the search warrant was issued" the Pennsylvania State Police learned that James Watson was not a real person. If the Commonwealth had provided a single witness with pre-search knowledge of the contents in the affidavit of probable cause at the April 11th hearing, this information would have been discovered with minimal cross-examination. Instead, the Commonwealth attempts to bypass the Constitutions by withholding key evidence until 28 days after the hearing. It strains credulity to suggest that this information was suddenly discovered *after* the April 11th hearing. But, even if this information was determined 1,357 days after the search, a sloppy investigation does not support the reliability of the contents within the affidavit of probable cause.

While "James Watson" is "named," the law does not support any value or reliability to the "named" status. No attempt to meet with "James Watson" was made. No attempt to talk with "James Watson" was made. No attempt to check public records for "James Watson" was conducted. Simply, "[m]ore police work was needed." *United States v. Leake*, 998 F.2d 1359, 1365 (6th Cir. 1993). If the mere inclusion of a name in an affidavit of probable cause becomes the basis for reliability and justifies a search of private property, then the Constitutions provide no

protection. "Upholding this warrant would ratify police use of an unknown, unproven informant—with little or no corroboration—to justify searching someone's home." *United States v. Wilhelm*, 80 F.3d 116, 120 (4th Cir. 1996). This is additionally concerning in the current "technological age" where people can claim a host of pseudonyms and use them for nefarious purposes.

B. The Name "Amelia Breitenbach" Provides No Added Reliability Nor Credibility Because Law Enforcement Never Interviewed "Amelia Breitenbach," Examined "Amelia Breitenbach's" Criminal Background, or Withheld This Information.

In its brief, the Commonwealth asserts that "Amelia Breitenbach's" name should lend additional credibility to a finding of probable cause. The name in isolation does not provide any credibility, and at best and without any investigation, it severely impairs any notion of credibility for any of the statements made by a person named "Amelia Breitenbach."

1. Amelia Breitenbach's Lengthy Criminal History Containing Numerous Crimes of Dishonesty with Felony Gradings

Contemporaneously with this brief, the Defendant filed a motion for judicial notice. That motion respectfully requests that the Court take judicial notice of the following information:

1. A person named Amelia L. Freno has a lengthy criminal history with numerous charges for crimes of dishonesty including three at felony gradings.
2. This same person named Amelia L. Freno lives in Allegheny County.

3. This same person named Amelia L. Freno has lived in southern portions of Allegheny County including Bethel Park.
4. This same person named Amelia L. Freno has "Amelia Breitenbach" and "Amelia L. Breitenbach" as listed aliases in the UJS Portal.
5. This same person that uses "Amelia Breitenbach" as an alias has been convicted of the following crimes of dishonesty:
    a. Forgery (18 § 4101 §§ A3), a Misdemeanor of the first degree;
    b. Acquisition or obtaining of possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge (35 § 780-113 §§ A12), an ungraded Felony;
    c. Falsified or Fraudulent Insurance Claims (18 § 4117 §§ A2), a Felony of the third degree;
    d. Theft by Deception – False Impression (18 § 3922 §§ A1), a Felony of the third degree; and
    e. Bad Checks (18 § 4105 §§ A1), a summary offense.[11]
6. While serving her probation sentence for crimes of dishonesty at felony levels, this same person that uses "Amelia Breitenbach" as an alias was convicted of a Mt. Lebanon, PA local ordinance listed as Container W/O Marijuana (LO § 3 §§ 702.1), a summary offense.
7. While serving her probation sentence for crimes of dishonesty at felony levels, this same person that uses "Amelia Breitenbach" as an alias,

[11] This offense occurred while serving a probationary sentence for crimes (a) – (d).

violated her probation on at least two occasions with one hearing before the Honorable Donald E. Machen of the Allegheny County Court of Common Pleas on May 13, 2014 and one hearing before the Honorable Philip A. Ignelzi of the Allegheny County Court of Common Pleas on June 26, 2015.

2. *Any Presumption of Reliability or Credibility Is Not Present with a Source Named "Amelia Breitenbach" Due to Numerous Crimes of Dishonesty with Felony Gradings.*

The Commonwealth claims that a person "named" in an affidavit should be given a presumption of reliability and credibility. While that could be true potentially with a name that has a track record for honesty, or at worst, nothing bad in that name's history, that is not the scenario with "Amelia Breitenbach."

The name "Amelia Breitenbach" has no presumptive credibility due to the numerous crimes of dishonesty associated with that name.

Crimes of dishonesty are so harmful to witness credibility that both the Pennsylvania Rules of Evidence and the Federal Rules of Evidence treat them differently than all other types of crimes. *See* Pa.R.E. 609(a) ("[f]or the purpose of attacking the credibility of any witness, evidence that the witness has been convicted of a crime…must be admitted if it involved dishonesty or false statement"); Fed. R. Evid. 609(a)(2) ("the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving - or the witness's admitting - a dishonest act or false statement"). The Congressional

Report describes crimes of dishonesty as "peculiarly probative of credibility."[12] In other words, crimes of dishonesty provide incredible insight into a witness or source's credibility and reliability, and "[t]he rule is intended to inform fact-finders that the witness has a propensity to lie…." *United States v. Washington*, 702 F.3d 886, 893 (6th Cir. 2012).

Courts throughout the country consistently agree. *See, e.g., Gordon v. United States*, 383 F.2d 936, 940 (D.C. Cir. 1967) ("A 'rule of thumb' thus should be that convictions which rest on dishonest conduct relate to credibility whereas those of violent or assaultive crimes generally do not"); *United States v. Ortega*, 561 F.2d 803, 806 (9th Cir. 1977) ("Human experience does not justify an inference that a person will perjure himself from proof that he was guilty of petty shoplifting…[a]n absence of respect for the property of others is an undesirable character trait, but it is not an indicium of a propensity toward testimonial dishonesty"); *Gov't of Virgin Islands v. Toto*, 529 F.2d 278, 281 (3d Cir. 1976) (defining crimes of dishonesty as those that reveal "the accused's propensity to testify truthfully"). In federal court, crimes of dishonesty, like forgery and fraud, are so damaging to the presumption of credibility that they are held to be more damaging to presumptions of credibility than robbery[13] and murder.[14]

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[12] H.R.Rep. No. 1597, 93d Cong., 2d. Sess. 9, reprinted in 1974 U.S.Code Cong. & Ad.News 7098, 7103.
[13] *Walker v. Horn*, 385 F.3d 321, 334 (3d Cir. 2004) (robbery is not a crime of dishonesty under the rules of evidence).
[14] *Eng v. Scully*, 146 F.R.D. 74,(S.D.N.Y. 1993) (multiple murder convictions were not crimes of "dishonesty").

Pennsylvanian courts maintain similar views concerning the importance of credibility and the negative presumption that exists when a person has been convicted of crimes of dishonesty. This presumption is so strong that a defense counsel's failure to include the impact these crimes cause to a witness' credibility as a special jury instruction has been used as the *sole* basis in granting a new trial for a defendant. *Commonwealth v. Cole*, 227 A.3d 336, 342 (Pa. Super. Ct. 2020).[15] "[C]rimes involving dishonesty or false statement are commonly referred to as *crimen falsi* crimes…" *Commonwealth v. Washington*, 269 A.3d 1255, 1264 (Pa. Super. Ct. 2022). *Crimen falsi* crimes involve an "element of falsehood, and include[] everything which has a tendency to injuriously affect the administration of justice by the introduction of falsehood and fraud." *Commonwealth v. Jones*, 5 A.2d 804, 805 (Pa. 1939) (internal citations omitted). Historically, the definition has also included "forgery, perjury, subornation of perjury, suppression of testimony by bribery or conspiracy to procure the absence of a witness, barratry, [and] the fraudulent making or alteration of a writing to the prejudice of another man's right." *Id.*

[15] In *Cole*, defense counsel failed to request a special jury instruction concerning a witness' prior convictions of *crimen falsi* crimes and the doubt that such crimes cast on the witness' credibility. This omission was held to be ineffective assistance of counsel based *solely* on this defect, and this defect could only be remedied through a new trial. *Id.* ("had the jury been instructed that [witness'] crimes of dishonesty were yet further reason to view [witness'] testimony with suspicion, there is a reasonable likelihood that it would have tipped the proverbial balance in favor of discrediting [witness]…."). *Id.*

The criminal record for the name "Amelia Breitenbach" contains five *crimen falsi* crimes:

1. Forgery: *Commonwealth v. Vales*, 2022 WL 1514143, at *1 (Pa. Super. Ct. May 13, 2022) ("theft by deception, bad checks, forgery…" are *crimen falsi* crimes); *United States v. Agnew*, 407 F.3d 193, 197 (3d Cir. 2005) ("Forgery, of course, involves dishonesty and false statement").
2. Acquiring Controlled Substance through Fraud: *See, e.g., Commonwealth v. Jones*, 5 A.2d 804, 805 (Pa. 1939).
3. Insurance Fraud: *In Re Bolus*, 251 A.3d 848, 852 (Pa. Commw. Ct. 2021).
4. Theft By Deception: *United States v. Ollie*, 996 F. Supp. 2d 351, 353 (W.D. Pa. 2014) ("forgery and theft by deception is the kind of crime that is highly probative of truthfulness").
5. Bad Checks:[16] *Dinges v. Winstead*, 2009 WL 1099190, at *6 (W.D. Pa. Apr. 23, 2009) ("writing bad checks [and] theft by deception" are *crimen falsi* crimes); *Wagner v. Firestone Tire & Rubber Co.*, 890 F.2d 652, 656 n.3 (3d Cir. 1989) (convictions for forgery and passing bad checks "involved dishonesty activity").

[16] *Commonwealth v. Young*, 638 A.2d 244 (Pa. Super. Ct. 1994) (crimes of dishonesty graded at summary level may be used for credibility determination).

These numerous convictions are "peculiarly probative"[17] and show "that the witness has a propensity to lie…." *United States v. Washington*, 702 F.3d 886, 893 (6th Cir. 2012).

3. No Credibility or Reliability Should Be Associated with "Amelia Breitenbach's" provided information.

While a named witness could potentially have a presumption of credibility, that name "Amelia Breitenbach" is not such a name. Presumptive credibility of the name "Amelia Breitenbach" listed in an affidavit of probable cause without any interview, investigation into information connected with that name, or confirmation that the named person "Amelia Breitenbach" is not the same Amelia Freno a/k/a Amelia Breitenbach that is a multiple convicted felon for crimes of dishonesty.

The Commonwealth attempts to bolster the information provided by "Amelia Breitenbach" in Paragraphs 11 and 12 by stating that the police confirmed a single item from her statement. She identifies Raymond Seddon as the owner. However, that is the only item that is corroborated by the police. Ownership of property is publicly available information which does not bolster reliability. *Commonwealth v. Wallace,* 42 A.3d 1040, 1052 (Pa. 2012); *see also United States v. Mendonsa*, 989 F.2d 366, 369 (9th Cir. 1993) ("[M]ere confirmation of innocent static details is insufficient to support an anonymous tip. The fact that a suspect lives at a

[17] H.R.Rep. No. 1597, 93d Cong., 2d. Sess. 9, reprinted in 1974 U.S.Code Cong. & Ad.News 7098, 7103.

particular location or drives a particular car does not provide any indication of criminal activity."); *United States v. Wilhelm*, 80 F.3d 116, 121 (4th Cir. 1996) (holding insufficient probable cause was presented in an affidavit where "the only corroboration [affiant] provided was that the informant's directions to [defendant's] home were correct. Almost anyone can give directions to a particular house without knowing anything of substance about what goes on inside that house…."). [18] Here, "Amelia Breitenbach's" only corroboration is a public fact: Raymond Seddon's publicly listed address.

"Amelia Breitenbach's" letter provides no support for probable cause. Instead, given the long criminal history of *crimen falsi* crimes associated with this name, and the fact that law enforcement failed to confirm to check anything other than Raymond Seddon's address severely harms any notion of support for a finding of probable cause.

C. The Total Value of the Two Letters

These two letters provide no support for probable cause. On their face, they are mere tips from unproven and anonymous informants which fail to establish probable cause. [19] Upon scrutiny and with the inclusion of materially omitted information as well as the correction of materially misrepresented information, each letter creates a strong negative inference to the validity of the affidavit's entire

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[18] In *Wilhelm*, the affidavit of probable cause was so deficient that the Fourth Circuit held that even the good faith exception could not save the warrant.
[19] *Illinois v. Gates*, 462 U.S. 213, 227 (1983). "The letter provides virtually nothing from which one might conclude that its author is either honest or his information reliable; likewise, the letter gives absolutely no indication of the basis for the writer's predictions regarding the [defendants'] criminal activities." *Id.*

contents. Combined, they form a significant burden to the Commonwealth that should offset any inclination of finding probable cause. The "catalyst" letter from "James Watson" proved to be false, as were many of the allegations therein, and the "support" letter from an "Amelia Breitenbach" was from a "named" person that lacks credibility in the eyes of the law. At a minimum, law enforcement should have interviewed in person, discussed on the phone, or simply run a background check on any of these two names. "More police work was needed." *United States v. Leake*, 998 F.2d 1359, 1365 (6th Cir. 1993). Had they done these simple acts, it is incomprehensible that a reasonable law enforcement officer would run to a magistrate based on these two sources nor would a reasonable magistrate sign a warrant based off names connected to a fake person and a person with a long felony record for crimes of dishonesty within the recent time period. "Upholding this warrant would ratify police use of an unknown, unproven informant—with little or no corroboration—to justify searching someone's home." *United States v. Wilhelm*, 80 F.3d 116, 120 (4th Cir. 1996).

The two letters provide no support for probable cause. A fake name and a felonious name do not bolster probable cause. Instead, they cast doubt on the entire warrant as well as the Commonwealth's conduct throughout the entire pre-search and pre-trial process.

D. Although the Two Letters Provide No Credible Information, They Should be Additionally Stricken Because They Include at a Minimum, Reckless Misstatements and Omissions

The two letters should be additionally stricken from the affidavit of probable cause because they represent *at a minimum* a "reckless disregard for the truth." *Franks v. Delaware*, 438 U.S. 154, 171 (1978). The Watson letter misrepresents that James Watson is a real person. Sometime, in the 1,357 days *after* the search, the Pennsylvania State Police determined that James Watson was not a real person. The Pennsylvania State Police confirmed that a person named Raymond Seddon lived at a publicly listed address and investigated via Facebook yet failed to confirm the mere existence of the key informant that wrote the letter that incited the request for the search warrant. This is *at a minimum* reckless.

Additionally, the warrant omits the lengthy criminal history for crimes of dishonesty for the name "Amelia Breitenbach."

"[O]missions are made with reckless disregard if an officer withholds a fact in his ken that 'any reasonable person would have known that this was the kind of thing the judge would wish to know.' *Commonwealth v. Taylor*, 850 A.2d 684, 688 (Pa. Super. Ct. 2004) (quoting *Wilson v. Russo*, 212 F.3d 781, 787–788 (3d Cir. N.J. 2000)). "[W]here an omission, rather than a misrepresentation, is the basis for a challenge to an affidavit for an arrest warrant, a court should inquire whether the affidavit would have provided probable cause if it had contained a disclosure of the omitted information." *Commonwealth v. Taylor*, 850 A.2d 684, 688 (Pa. Super. Ct. 2004) (citing and adopting the standard outlined in *United States v. Frost*, 999 F.2d

737, 743 (3d Cir. Pa.1993)). While *Taylor* outlines omissions concerning affidavits of probable cause in the arrest warrant context, the standard should equally apply to affidavits of probable cause in the search warrant content. Both are sworn affidavits made to a neutral magistrate and under the same standard.

The inclusion of the omitted information, and the fact that the affidavit fails to contain any information that the affiant spoke or met with this "Amelia Breitenbach" to determine whether she was the felon Amelia Breitenbach or a credible concerned citizen would concern any reasonable, neutral magistrate. The inclusion of the omitted information would offer further value in the context that the affiant failed to confirm the identity of "James Watson." Specifically, "Amelia Breitenbach's" forgery charge is "the kind of thing the judge would wish to know." *Commonwealth v. Taylor*, 850 A.2d 684, 688 (Pa. Super. Ct. 2004); *see also Com. v. Jones,* 13 Pa. D. & C.4th 351, 355 (Com. Pl. Bucks 1992) (suppression granted because the police failed to investigate one informant's background that contained *crimen falsi* crimes and omitted knowledge of another informant's similar crimes which "constituted a reckless disregard for the truth which tended to mislead the issuing authority").

IV. The Defendants Have Legitimate Expectations of Privacy and Standing to Challenge, But Those Facts Are Moot Because the Commonwealth Willfully Failed to Meet Its Burden

The Commonwealth's brief and its presentation at the April 11th hearing blends standards of privacy and standing in an attempt to cure its intentional failure to meet its burden at the April 11th hearing.

The Commonwealth foundations its privacy interest argument by quoting *Commonwealth v. Gordon*, 683 A.2d 253, 256 (Pa. 1996). However, in an additional attempt to bypass its failure, it deceptively omits the Supreme Court's footnote that should be included within the quotation marks. The footnote reads, "This does not alter the Commonwealth's burden of proving at the suppression hearing that the government's search did not violate the rights of the defendant." Rather than admit defeat, the Commonwealth *once again* withholds, deceives, and attempts to trick the Court. By failing to present a single witness, the Commonwealth failed to meet its burden, and without misstatements of fact and law, it cannot prevail. At this point, the Court could grant suppression. The Superior Court would affirm the ruling, and so would the Supreme Court. *See* Section I of this brief.

Nevertheless, the cases cited by the Commonwealth are distinguishable from the case *sub judice* and many of the Commonwealth's arguments do not conform with the law.

In *Gordon*, the police received a call that a man had snatched a purse in downtown Philadelphia and received a description of the suspect. Upon arrival, "[t]he officer proceeded to a rear alley where an elderly man told him that a man

fitting the description of the perpetrator had been living in an abandoned house down the alley. 683 A.2d 253, 255 (Pa. 1996). As the officer went further into the alley, he noticed a house that stood out from the rest. He entered the house from an open rear door that had partially separated from the door frame. Inside he discovered the suspect and the purse. *Id.* at 69.

In *Peterson*, the defendant sold drugs from an abandoned storefront in Philadelphia. *Commonwealth v. Peterson*, 636 A.2d 615, 616 (Pa. 1993). An anonymous informant told police that drug sales were occurring at this abandoned storefront. To investigate, an undercover officer went to the establishment and purchased drugs. After securing the drugs, he went back to his vehicle and waited for additional officers. When they arrived, the police conducted a warrantless search of the abandoned storefront. The police justified the warrantless search through exigency. *Id.* at 616-17.

The present case is distinguishable because, unlike *Gordon* and *Peterson*, the property was not abandoned and the co-defendant daughters had a legitimate presence on their mother's property. In *Gordon* and *Peterson*, the suspect had no connection to the owners of the properties. They both involved searches of abandoned buildings. Additionally, these cases involved warrantless searches rather than the scenario *sub judice*: the Commonwealth backtracking from a fatally flawed warrant.

The Commonwealth's argument simultaneously confuses criminal procedure and real property law in its attack on privacy. In support of this argument, the

Commonwealth argues that expectation of privacy is only established where a person can exclude another from the property. Further, the only way that a person can exclude is through an ownership in the property. The Commonwealth conflates property ownership with the sole basis for the expectations of privacy. Not so. Expectation of privacy exists even in instances where there is no ownership of the real property. *See, e.g., Minnesota v. Olson*, 495 U.S. 91 (1990) (houseguest has a legitimate expectation of privacy in a host's home even if that guest has no property interest in the home); *United States v. Benson*, 12 F.3d 1108 (9th Cir. 1993) (non-owner defendant "had a legitimate expectation of privacy in his mother's home, and standing to challenge its search."); *United States v. Dubose*, 2006 WL 1030154, at *7 (D.D.C. Apr. 19, 2006), ("the circumstances of this case-involving a common social practice and a close familial nexus to the property, as well as the subjective belief of defendant that his personal property was secure when left on his mother's property-support a finding that defendant had a legitimate expectation of privacy in his mother's backyard during the time that the vehicle was parked there").

It argues that none of the Defendants – including co-owner[20] Charlotte Binakonsky – could have prevented co-owner Raymond Seddon from the property. This argument has no relevancy to the case *sub judice* for the purpose raised by the Commonwealth.[21] Additionally, the Commonwealth makes a bald assertion –

[20] *See* Trooper Sayles' testimony at the hearing on April 11, 2022.
[21] It is merely a restatement of real property law: whether held as joint tenants, tenants in common, or tenants by the entirety, co-owners *generally* cannot exclude another co-owner from accessing to the property.

without citation – that "[n]one of the three Defendants could have…prevented [Raymond Seddon] from allowing others to access the property…." While the Commonwealth presents this as the law in every scenario, this is not always true.[22]

A person doesn't waive privacy based on the mere fact that they may own or reside within multiple properties. For example, in *Rakas*, the owner of that summer cabin had a privacy interest regardless of that address being listed on their driver's license. Here, the two co-defendant daughters were present on their owner-mother's property at approximately noon on a weekday, and had complete access while their mother was not present. Further, the property is private property that is not open to the public for any purpose.

In Paragraph 20 of its brief, the Commonwealth makes a bald claim that all of the Defendants lack a reasonable expectation of privacy based on the crimes that were *alleged* to have occurred on the property. This is absurd.[23] Under the Commonwealth's logic, if a suspect was allegedly running a drug trafficking operation from one of their homes, no warrant would be needed because there would be no expectation of privacy. In support, it once again, cites the *Rakas* footnote and

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[22] *See, e.g., Georgia v. Randolph*, 547 U.S. 103, 106, (2006) (when one co-tenant consents to a search while another co-tenant declines, "a physically present co-occupant's stated refusal to permit entry prevails, rendering the warrantless search unreasonable and invalid as to him").

[23] *United States v. Fields*, 113 F.3d 313, 321 (2d Cir. 1997) ("We also reject the government's argument that the illegal nature of Fields' activities made any expectation of privacy regarding the premises unreasonable. Privacy expectations do not hinge on the nature of defendant's activities—innocent or criminal In fact, many Fourth Amendment issues arise precisely because the defendants were engaged in illegal activity on the premises for which they claim privacy interests").

Peterson case which are highly distinguishable. Without any evidence, the Commonwealth *testifies* in its brief that the property's "sole purpose" is in furtherance of an illegal operation.

The Commonwealth's standing argument additionally fails because "contested evidence, tainted by the initial illegality, must be suppressed, even absent a demonstrable expectation of privacy in the locations where the evidence was found." *Commonwealth v. Shabezz*, 166 A.3d 278, 280 (Pa. 2017).

V. The Commonwealth's Attempt to Shroud these Numerous Defects Violates the Confrontation Clause and These Deceptive Tactics Should Not Be Supported by the Court.

"James Watson" is not real. Either the Commonwealth knew that *prior* to the request for the search warrant and withheld it from the magistrate, or failed to conduct even a minimal investigation into "his" background. Once this was learned by the Pennsylvania State Police, they withheld it from the Defendants, their counsel, and numerous tribunals. In revealing this critical information, the Commonwealth does so in an evasive matter and fails to indicate on which of the 1,357 post-search days they discovered this information. Why did the Defendants and their respective counsel first learn that "James Watson" was a fake name signed by an unknown person until 929 days after charges were filed, 1,357 days after the search warrant was approved and executed, and 28 days after the suppression hearing?

In *Commonwealth v. Antoszyk*, 985 A.2d 975, 977 (Pa. Super. Ct. 2009), *aff'd*, 38 A.3d 816 (Pa. 2012), during cross-examination at the suppression hearing, a witness revealed that he had provided false information that was used in the affidavit of probable cause. Based on this revelation, the Superior Court rejected the Commonwealth's argument that "an informant's false averments in an affidavit of probable cause does not warrant suppression of evidence obtained as a result of those averments under the Pennsylvania Constitution," and suppressed all seized evidence. *Id.* at 978. The Commonwealth's gamesmanship at the April 11th hearing was conducted to avoid a similar scenario. Instead, 28 days after the hearing, the Commonwealth revealed information confirming that James Watson is not a real person

The name "Amelia Breitenbach" offers no credibility or reliability due to the name "Amelia Breitenbach's" lengthy history of *crimen falsi* crimes. Either the Commonwealth knew that *prior* to the request for the search warrant and withheld it from the magistrate, or failed to even search the name in UJS.

The Commonwealth's bizarre tactics on April 11 were designed to conceal this information from cross-examination as well as the Court. The Defendants' Sixth Amendment rights were not violated by neglect nor mistake, instead the Commonwealth acted with deceit. In an attempt to conceal Constitutional violations, it trampled across other Constitutional protections. As the court in *Ryan* warned:

> If the procedure followed by the Commonwealth in this case were upheld then policemen could recite in an affidavit as probable cause for the issuance of a search warrant any and all statements which they felt were of help in obtaining the warrant, irrespective of the truth or veracity of those statements, their legality or illegality, or constitutionality or unconstitutionality, realizing that such statements would be insulated from defendant's right of cross-examination since the Commonwealth did not have to call witnesses who would be subject to cross-examination to establish the facts necessary to support the issuance of the search warrant.

Commonwealth v. Ryan, 407 A.2d 1345, 1348 (Pa. Super. Ct. 1979). Unfortunately, that is exactly what the Commonwealth attempts in the case *sub judice*.

The Commonwealth knew this information would be revealed under a simple cross examination, and didn't want it to be exposed to the Defendants, their counsel, and the Court. To avoid this scenario, they failed to present *any* person or thing with knowledge of *anything* in the affidavit of probable cause. Instead, the Commonwealth tried to sneak it in through a court filing that could not be cross examined…almost a thousand days after charges were filed. This was deception by design.

CONCLUSION

In the Defendant's opening brief, the following challenges were raised:

1. The warrant fails to identify any of the items to be seized.
2. The Affidavit of Probable Cause is built from unverified rumors and thus devoid of probable cause.
3. The warrant is overbroad and authorizes an Unconstitutional general search.

The Commonwealth fails to respond and thus concedes to the first and third challenges. Notably, these two challenges - in isolation - render the entire warrant defective. Although, even if these defects were not present, the affidavit of probable cause is still insufficient. The contents of the affidavit of probable cause:[24]

1. The "James Watson" Letter: This is the triggering item that started the events which place the Defendants before the Court. In less than 24 hours from first reading this false document, the Pennsylvania State Police and H.O. Cunningham raided a 150-acre private property with at least a dozen law enforcement officers. The letter contained horrible, horrific lies of abuse that started the entire non-investigation, rush-to-the-magistrate process which led to the illegal search and seizure by H.O. Cunningham and the Pennsylvania State Police. It contained no reference to "Watson's" reliability, the timing of the information listed by "Watson", nor the source of "Watson's" knowledge. Over 1,357 days passed before the Commonwealth admitted that "James Watson" does not exist and informed the Defendants of that important information. A simple search – taking a few minutes of investigation - to confirm this fact was not done 1,371 days ago. Instead, the Pennsylvania State Police checked Facebook.
2. The "Amelia Breitenbach" Letter: At best for the Commonwealth, the name "Amelia Breitenbach" lends no credibility to the affidavit. In reality,

[24] A much more thorough analysis of the defects in each of these items is contained in Defendant's opening brief in the section entitled "II. The Affidavit Is Built from Unverified Rumors and Thus Devoid of Probable Cause."

the name "Amelia Breitenbach" should receive a negative presumption of credibility for any information conveyed from this letter *until* the Commonwealth met with and confirmed that the named "Amelia Breitenbach" was not the felon Amelia Breitenbach with numerous convictions of *crimen falsi* crimes. The affidavit does not include this information. Additionally, it suffers from the same defects of the Watson letter: no indication of timing, source of knowledge, reliability, or veracity.

3. Two Facebook Posts: This information doesn't mention the names of the purported posters, the timing of the posts, the past reliability of the posters, the potential source of knowledge of the posters, and continues vague references like "in the area of" and "possible puppy mill."
4. H.O. Cunningham's Hearsay Statements: This information fails to support a finding of probable cause because it is mere rumor from unnamed, unverified sources. In short, it is hearsay-upon-hearsay from unnamed sources that have no indication of reliability.
5. NCIC search showing Raymond Seddon lives at 41 Hamilton Acres Lane: a publicly available piece of information.

Rather than concede and admit that the warrants' numerous defects run afoul of the Defendants' Constitutional rights, the Commonwealth misleads, deceives, and ducks the Defendants' rights and the Court's honor. There were numerous potential witnesses that could testify about the affidavit of probable cause the preparation thereof, and the contents therein. Instead the Commonwealth

put a single, general witness that had no pre-search knowledge nor any knowledge of the contents in the affidavit. This tactic backfired because the Commonwealth failed to meet its burden. The Defendants never got the opportunity to exercise their "right to test the veracity of the information contained in the search warrant." *Commonwealth v. Ryan*, 268 Pa. Super. 259, 264–65, 407 A.2d 1345, 1348 (1979). Simply, "[t]o rule otherwise would permit police in every case to exaggerate or to expand on the facts given to the issuing authority merely for the purpose of meeting the probable cause requirement, thus precluding an objective determination of whether probable cause for the warrant existed." *Id.*

The Commonwealth knew that this information would be revealed, and that it would severely impact the narrative that it has presented to the public and the Court for over 1300 days. Instead, it ducked the Court's authority, the Defendants' rights, and the Constitutions. There was no opportunity to test the veracity. Only a person can be cross-examined. Numerous questions are opined in the Defendant's brief concerning the two "letter writers." Questions concerning their identities, interviews, and criminal records are explored. One answer would have confirmed that "James Watson" was a fake person that was never interviewed by the Commonwealth. Another answer would tell whether the referenced "Amelia Breitenbach" in the warrant is the same "Amelia Breitenbach" located in Allegheny County that is a three-time convicted felon with numerous crimes of dishonesty including acquiring controlled substances through misrepresentation, forgery, fraud, and theft by deception. The Defendants were never able to explore whether

the Commonwealth knew – and withheld from the magistrate – this information. This information is "the kind of thing the judge would wish to know." *Taylor*, 850 A.2d at 688.

While the Commonwealth finally revealed that "James Watson" is not real in its brief, it failed to answer any of the nearly identical questions concerning the other named informant, Amelia Breitenbach. Once again, the Commonwealth commits another deception upon the Court. Partial answers that withhold material information are frauds by omission. At this point in this case, it is simply the Commonwealth's standard playbook: duck, evade, and avoid the Constitutional protections provided to the Defendants….and try to cover up its mess.

The Commonwealth says its interpretation is practical, prudent, and reasonable. "Common sense"[25] shows that failing to suppress would be the opposite. Following the Commonwealth's logic would make the following scenario Constitutionally sound:

> A single person with numerous felonies for crimes of dishonesty sends a letter to an animal control officer and posts information on Facebook. After this letter fails to get attention, this person sends a letter using a fake name to law enforcement to bolster the previous letter that failed to get attention. In both letters, outlandish, over-the-top claims are used to create urgency even though they have nearly no basis in fact. Law enforcement checks a single fact which is a fact that is publicly known – the address of the person named in the letter – and then raids a property without checking anything other than rumor and Facebook.

The Constitutions are stronger than this. The Court should grant suppression. The Superior Court would affirm the ruling, and so would the Supreme Court.

[25] *Illinois v. Gates*, 462 U.S. 213 (1983).

WHEREFORE, the Defendant respectfully requests that this Honorable Court grant the relief requested in the suppression motion.

Respectfully submitted:

Steffan T. Keeton, Esq.
Attorney at Law

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Steffan T. Keeton, Esq.

Signature:

Name: Steffan T. Keeton, Esquire

Attorney No. (if applicable): 314635

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CRIMINAL COURT DIVISION

COMMONWEALTH OF PENNSYLVANIA,

NO.: CR 711-2021

vs.

EMILY BINAKONSKY,

Defendant

O R D E R

AND NOW, this _____ day of _____, 2022, upon consideration of Defendant's Motion to Suppress, it is hereby ORDERED and DECREED that that Defendant's Motion is GRANTED and that all evidence obtained from 41-43 Hamilton Acres Lane is hereby SUPPRESSED.

BY THE COURT:

_____
Judge Valarie Costanzo